

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of REGENA P. HEINRICH and DEPARTMENT OF THE NAVY,  
MARINE CORPS RECRUIT DEPOT, San Diego, CA

*Docket No. 99-258; Submitted on the Record;  
Issued July 25, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On June 30, 1997 appellant, then a 43-year-old purchasing agent, filed a claim for stress and severe depression. In a letter dated September 1, 1997, appellant described incidents and conditions of her employment to which she attributed her emotional condition. By decision dated July 14, 1998, the Office of Workers' Compensation Programs found that appellant had not cited and substantiated any compensable factors of employment, nor had she shown error or abuse in administrative actions by the employing establishment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>1</sup>

Some of the incidents cited by appellant as causative of her emotional condition involve administrative or personnel actions by the employing establishment. Such matters, while generally related to the employment, are administrative functions of the employer, not duties of the employee.<sup>2</sup> As such, they do not fall within coverage of the Act, unless the evidence

---

<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Janet I. Jones*, 47 ECAB 345 (1996).

discloses error or abuse on the part of the employing establishment.<sup>3</sup> Appellant has not shown any error in the employing establishment's July 10, 1997 administrative action of requesting medical documentation to support her request for sick leave beginning June 30, 1997.<sup>4</sup> The assignment of a work schedule is an administrative matter<sup>5</sup> and appellant has not shown any error or abuse in the employing establishment's establishment of a new starting time or lunch period.

Appellant also attributed her emotional condition to disciplinary actions taken by the employing establishment, consisting of a February 8, 1997 letter of caution for improper conduct, a June 18, 1997 reprimand for absence without leave and a June 27, 1997 proposal of a five-day suspension for verbal abuse and insubordination. Disciplinary actions by the employing establishment are considered administrative or personnel matters and error or abuse must be shown for such matters to be afforded coverage under the Act.<sup>6</sup> Although appellant alleged that the February 8, 1997 letter of caution for improper conduct was reprisal for the grievance she filed in January 1997, she has not provided any substantiation that this letter of caution was issued for this reason. Even though her absence without leave, for which she received a reprimand on June 18, 1997, was changed to sick leave, this modification of the employing establishment's personnel action does not in and of itself, establish error or abuse.<sup>7</sup> Appellant has also not shown error or abuse in the employing establishment's January 15, 1997 directive that further leave would not be granted unless it was preplanned or in her supervisor's request to see him about leave requested on January 14, 1997.<sup>8</sup>

Appellant also attributed her emotional condition to harassment by the employing establishment. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>9</sup> Appellant has alleged that on September 5, 1996 her supervisor told her, in response to her sick leave request, that he could see she was not sick, that on September 13, 1996 the employing establishment's deputy director criticized the way appellant spoke and made a sarcastic remark to the effect that nobody could be "as good" as appellant, that on September 23, 1996 and February 3, 1997 coworkers made

---

<sup>3</sup> *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>4</sup> *Thomas J. Costello*, 43 ECAB 951 (1992).

<sup>5</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>6</sup> *Sharon R. Bowman*, 45 ECAB 187 (1993).

<sup>7</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>8</sup> *Kathi A. Scarnato*, 43 ECAB 335 (1991) (letter restricting sick leave found not compensable in the absence of showing of error or abuse).

<sup>9</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

inappropriate remarks about her diabetic condition, that on January 9, 1997 her supervisor stated that only two employees were qualified for a promotion, that on January 15, 1997 her supervisor told her that he would treat her “like an E5,” that on March 13, 1997 her supervisor made derogatory remarks about women Marines and that she was yelled at and belittled by her supervisor on June 9, 1997. Appellant, however, has not submitted any evidence substantiating that these incidents occurred as alleged and, therefore, has not met her burden of proof regarding these alleged incidents. Mere perceptions alone of harassment or discrimination are not compensable under the Act.<sup>10</sup> Thus, appellant’s feeling that she was singled out regarding work assignments and being asked to stay following a meeting on January 15, 1997 are not compensable. Appellant also has not shown harassment in being asked to provide proof that she gave blood on January 10, 1997.

Appellant has alleged a burdensome work load, which can be a compensable factor of employment under the Act.<sup>11</sup> She has, however, failed to provide sufficient details or substantiation of this employment factor. Appellant has cited and substantiated two compensable employment factors: a mandatory lunch paid for by the employees on January 9 1997 and June 6, 1997 instructions regarding a furniture purchase. These incidents relate to appellant’s duties or a requirement imposed by the employment and thus are compensable under the Act. However, appellant’s burden of proof is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional condition and that this condition is causally related to the substantiated compensable employment factors.<sup>12</sup>

The medical evidence does not establish that appellant’s emotional condition is causally related to the substantiated compensable employment factors. Although Dr. Craig Coenson noted that appellant was “written up” for not seeing a doctor when she took sick leave and stated that appellant found a new supervisor stressful, degrading condescending and verbally abusive, this doctor’s reports do not attribute appellant’s emotional condition, diagnosed as an adjustment disorder, to the substantiated compensable factors of employment noted above. Dr. Karl Walter stated that appellant was incapacitated by depression that appeared to have been triggered by her intolerable work situation, but did not set forth any specific employment incidents or conditions. Dr. Jose A. Pelayo stated that appellant’s acute depression on June 27, 1997 necessitated her hospitalization, but did not attribute her condition to her employment. Appellant has not met her burden of proof.

---

<sup>10</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>11</sup> *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

<sup>12</sup> *William P. George*, 43 ECAB 1159 (1992).

The decision of the Office of Workers' Compensation Programs dated July 14, 1998 is affirmed.

Dated, Washington, D.C.  
July 25, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member